Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests	)	MM Docket No. 94-150
	)	
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
	)	
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221

To: The Commission

REPLY COMMENTS OF HSN, INC.

HSN, Inc. ("HSNI") hereby replies to comments filed in response to the Commission's November 7, 1996 Second Further Notice of Proposed Rule Making, FCC 96-438, and Further Notice of Proposed Rule Making, FCC 96-436, in the above-captioned proceedings.

I. INTRODUCTION

HSNI believes that outmoded structural restraints on television station ownership and investment at the local level can no longer be justified in today's highly competitive video marketplace. The record of this proceeding, including evidence of the competition and diversity benefits generated by television

LMAs, demonstrates that permitting combinations involving UHF stations can help stabilize and strengthen undercapitalized outlets, with concomitant improvements in local service. Meanwhile, regulatory and antitrust mechanisms already exist to deter anticompetitive conduct. In particular, as HSNI argued in its initial Comments, a reinvigorated application of the public interest standard will more effectively ensure a rich diversity of programming and viewpoints at the local level than outmoded structural limitations. Proponents of continued regulation have failed to demonstrate otherwise.

HSNI believes that relaxation of the television duopoly rule to permit large-market combinations involving at least one UHF station, and rejection of the proposed "equity or debt plus" attribution standard, are crucial to its plan to transform its owned stations and affiliates into vibrant local outlets serving their communities with an innovative mix of entertainment, information, children's and sports programming. The rules should support and facilitate, rather than impede, HSNI's efforts.

II. PERMITTING LARGE-MARKET COMBINATIONS INVOLVING AT LEAST ONE UHF STATION WOULD GENERATE TANGIBLE PUBLIC INTEREST BENEFITS.

Proponents of a categorical prohibition on television duopolies have not substantiated their claims that relaxation of the current rule will adversely affect diversity and competition. See, e.g., Comments of Media Access Project, et al. (February 7, 1997); Comments of Post-Newsweek Stations, Inc. (February 7, 1997). Meanwhile, HSNI and other commenters have demonstrated that the current duopoly rule limits local diversity by depriving stations that need them of the economic efficiencies that can be achieved through combined operation. As a result of their weak financial status, such stations frequently function merely as "repeaters" of homogenous syndicated programming lacking any distinct local orientation. Yet the significant cost savings that can be achieved through the consolidation of fixed managerial, administrative and marketing resources can benefit the public interest by enabling licensees such as HSNI to redirect human resources and capital toward the development, production and distribution of innovative and original programming. Perpetuating a regulation that prevents the exploitation of productive synergies thus may reduce, not enhance, diversity.

Numerous commenters provide support for the Commission's tentative view that UHF stations such as those owned by HSNI present the most compelling case for local combinations. The record indicates that, despite gains made possible by increased cable carriage and improved set design, many UHF stations continue to be trapped in a vicious cycle that virtually guarantees weak performance: UHF stations tend to have higher operating costs and smaller coverage areas, reaching smaller potential audiences, and consequently -- because broadcast television is an advertiser-supported service, with a single revenue stream -- generate less revenue than their VHF counterparts. Lower station revenues, in turn, mean fewer resources available for program procurement, development and production, resulting in lower-quality programming and service to their communities.

Smaller, independent UHF stations such as HSNI's, meanwhile, are at risk to lose cable carriage in the event the must-carry rules are struck down, and appear already to be victims of the inherent capacity limitations of DBS "spot-beam" technology for retransmission of local signals. See, McClellan, S., "Last shall be last," Broadcasting & Cable, March 17, 1997 at 78 (as many as 500 stations, including weaker independents, could be dropped if must-carry struck down); Littleton, C., "Broadcasters weigh plan," Broadcasting & Cable, March 17, 1997 at 38 (DBS capacity constraints may limit retransmission of local signals). Under the circumstances, allowing combinations involving UHF stations could permit these outlets to become stronger voices than if they remained under separate ownership. Foreclosing this option, on the other hand, may well extinguish these voices altogether (particularly in a post must-carry world). And, by definition, perpetually weak -- or worse, silent -- stations do not serve diversity.

Nor is the anticipated advent of digital television a panacea for UHF station operators. The timing of the ultimate transion to DTV remains uncertain. The capital expense of conversion will be substantial, and will represent a greater burden for weaker UHF stations than for their VHF counterparts. Furthermore, the DTV allotment proposal under consideration by the Commission provides for replication of existing service areas, and thus only perpetuates the disparity between UHF and VHF stations, rather than eliminating it. In any case, even the most optimistic predictions regarding the possible beneficial effects of the conversion to DTV for UHF broadcasters are purely theoretical. It simply is impossible to predict whether UHF stations will receive any tangible benefits from DTV in the absence of an extensive real-world test of the technology. And the ability to transmit multiple channels of programming will only multiply the problems of currently undercapitalized stations as they struggle to develop sufficient content for those channels.

Proponents of continued regulation do not deny either the continuing inherent disadvantages of UHF outlets or the potential efficiencies and public interest benefits that could result from local combinations. See, e.g., MAP Comments at 14. Instead, they posit that large-market, UHF combinations will have no "market incentive" to broadcast non-entertainment programming. See Comments of Saga Communications, Inc. (February 7, 1997) at 3. But, of course, this view is equally applicable to all television stations, whether commonly-owned or not, and only underscores the impropriety of using structural ownership restrictions as a surrogate for the public interest standard. Besides, the operator of two commonly-owned local stations actually would have an incentive, in effect, to counterprogram against itself, thereby enhancing diversity by providing new and different viewpoints on both stations. Evidence of this trend toward innovative programming can be found by examining the contributions of LMAs to improvements in local news and other non-entertainment programming. See Comments of The Local Station Ownership Coalition, February 7, 1997, at 63-64. It also has begun to emerge in some radio markets, where formerly underperforming separately-owned stations have flourished as part of larger groups offering "a more diverse yet complementary demographic spectrum." Hochman, S., "The Dance of the Dial," The Los Angeles Times, Sunday, March 16, 1997, at 4.

HSNI believes the concerns of commenters opposing relaxation of the duopoly rule will be addressed if the Commission strikes the proper balance between commerce and public responsibility. As HSNI explained in its initial Comments (at 4-5), in relaxing the rule to permit UHF combinations, the FCC should clarify its expectations for local, educational and nonentertainment progamming, and put in place a reasonable system for reviewing broadcaster performance. When filing for renewal, broadcasters could explain how they intend to serve their communities and how much nonentertainment programming they expect to air. The FCC could assess their performance and either approve the license renewal, or indicate what is expected to meet the requirements.

Let us be clear: HSNI does *not* favor the adoption of programming quotas. It does *not* believe, as proposed by some commenters, that a promise to provide certains types or amounts of programming should be a *quid pro quo* for same-market television station combinations. See MAP Comments at 24-26. HSNI's position has been, and remains, that an appropriate mechanism already is in place to ensure that broadcasters -- including commonly-owned local stations -- present programming that is truly responsive to the needs, interests and concerns of viewers in their communities. What is needed are clear and unambiguous expectations of all licensees regarding program performance, and rigorous enforcement of those expectations. What is not needed are outmoded structural restraints that prevent broadcasters such as HSNI from becoming meaningful competitors in their local markets.

III. THE PROPOSED "DEBT OR EQUITY PLUS" ATTRIBUTION STANDARD WILL DETER INVESTMENT IN LOCAL STATIONS.

As HSNI explained in its initial Comments (at 12-15), a program supplier may be the most likely investor in weak UHF stations, precisely because it needs to strengthen its existing distribution base or to assemble a portfolio of stations to ensure the critical mass of outlets to permit its programming to be viable. Proponents of the "debt or equity plus" attribution standard have not established that the theoretical harm of permitting such investment outweighs its demonstrable public interest benefits.

Good programming costs money, and to produce good programming, large amounts of capital must generally be invested in program development and production. Obviously, a program supplier such as HSNI will be reluctant to make such investments without some assurance that it will have access to a distribution infrastructure capable of transmitting the programs to an audience sufficiently large that enough revenue is produced to cover development, production and distribution costs, while generating a competitive return on a highly risky investment. Conversely, the proposed rule would deter investment by broadcasters in potential suppliers of new, innovative programming.

Investments to upgrade the internal operations of individual stations make it feasible for a program supplier like HSNI to invest, in turn, in higher quality program offerings with corresponding public interest benefits across all sectors of the broadcast economy. Local stations benefit from improved facilities. Other HSNI outlets benefit from access to higher-quality programming and crosspromotional opportunities. Advertisers benefit from increased exposure to their messages. Viewers benefit from better local service. Bad programming and weak stations, on the other hand, hardly make a significant contribution to diversity.

By suggesting that the "equity or debt plus" restriction is needed because program suppliers may have a special incentive to "work around" the existing attribution rules, the proponents of the rule, like the Commission, only point up the unintended consequences of the existing attribution rules: they inhibit entry by efficient risk-sharers. Meanwhile, the commenters have failed to demonstrate that existing behavioral regulations, together with the antitrust laws, are inadequate to prevent undue influence by program suppliers. HSNI believes there is no valid reason to deter voluntary, mutually advantageous contractual relationships that produce substantial public interest benefits.

IV. CONCLUSION

If the Commission's paramount objective is to promote a vital broadcast service at both the national and the local levels, it must provide incentives for broadcasters to develop, produce and distribute innovative programming. The efficiencies that can result from common ownership of television stations at the local level, and the capital infusion into underperforming local outlets that can be provided by their program suppliers, would create precisely such incentives, thereby enhancing diversity and competition.

Respectfully submitted,

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